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10/057,816	01/24/2002	Ronald L. Mahany	36500ZXD	4621

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EXAMINER

VO, NGUYEN THANH

ART UNIT PAPER NUMBER

2685

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

04

## Office Action Summary

Application No.

10/057,816

Applicant(s)

MAHANY, RONALD L.

Examiner

Nguyen T Vo

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-34 and 46-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-33 is/are allowed.
- 6) ☒ Claim(s) 34 and 46-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 07/973,237.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 26-34 and 46-57 in the reply filed on 12/29/2004 is acknowledged.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because the application number between U.S. Patent No. 5,070,536 and U.S. Application No. 07/800,977 is lacking (see page 2 of the Oath/Declaration regarding the application number with the filing date of 05/26/1992 and pending status (92 P 387) (DN36500ZX)).

**It is noted that the above defectiveness of the Oath/Declaration has been brought to applicant's attention since the prosecution of the parent applications 07/910,865 and 08/551,442. In fact, applicant states on an amendment filed on 03/17/1997 during the prosecution of the parent application 08/551,442 that a new Oath/Declaration will be filed. However, a new Oath/Declaration has not been received by the Office. Therefore, a new Oath/Declaration is now required.**

In addition, the Oath/Declaration does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year

of its filing. It is noted that an Oath/Declaration of the parent application 07/973,237 is provided to claim the priority of foreign application EP89114386.9 filed on 08/03/1989 and international application PCT/US90/03282 filed on 06/07/1990. However, since the present application is a continuation-in-part of the parent application 09/973,237, **a new Oath/Declaration is required** if applicant wants to claim priority of foreign application EP89114386.9 filed on 08/03/1989 and international application PCT/US90/03282 filed on 06/07/1990.

### ***Specification***

3. The disclosure is objected to because of the following informalities: the Appendices D3, D4, D5, G, E, H are not mentioned in the present specification (only Appendices A, B, C, D1, D2 and F are mentioned in the present specification).

Appropriate correction is required.

4. The newly-added first two pages of the present specification are objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: **the “incorporated by reference” in the last two paragraphs on page 2 is not supported in the original specification.**

Applicant is required to cancel the new matter in the reply to this Office Action.

5. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

6. It is determined that the claimed invention of claims 26-34, 46-57 and newly-added claims 58-71 are not supported by the disclosure of the parent application 07/973,237 filed on 11/09/1992. Accordingly, the claimed invention of claims 26-34, 46-57 and newly-added claims 58-71 are not supported by the disclosures of the European Patent Application EP89114386.9 filed on 08/03/1989, and international application PCT/US90/03282 filed on 06/07/1990.

**Since the present application has several parent applications, it is important to determine the effective filing date of the claimed invention of each claim. As best understood by examiner, the claimed invention of claims 26-31 has the effective filing date of 07/06/1992 which is the filing date of the parent application 07/910,865. The claimed invention of claims 32-34, 46-71 has the effective filing date of 08/04/1989 which is the filing date of the parent application 07/389,727.**

**In the future, if any new claims are added it is applicant's responsibility to state the effective filing date of each claim and how each claim is supported by the parent applications.**

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 34, the recitation "the received test signal" lacks clear antecedent basis.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 46-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 5,070,536. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

As to claims 46-51, 54-57, 60-66, 69-71, claims 1-49 of the above U.S. Patent discloses all the claimed limitations.

As to claims 52-53, 67-68, claims 1-49 of the above U.S. Patent fails to expressly disclose that the remote wireless communication unit comprises a mobile unit on a vehicle such as a forklift vehicle as claimed. The examiner, however, takes Official Notice that a communication system employing remote wireless communication units comprising a mobile unit on a vehicle such as a forklift vehicle is known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of the conventional communication system employing remote wireless communication units comprising a mobile unit on a vehicle such as a forklift vehicle to claims 1-49 of the above U.S. Patent, in order to employ the communication system in environments such as warehouses.

As to claims 58-59, claims 1-49 of the above U.S. Patent fails to expressly disclose the data rates being 4800 baud and 9600 baud as claimed. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify claims 1-49 of the above U.S. Patent such that the data rates of 4800 baud and 9600 are used, so that the remote wireless communication units could operate with standard data rates.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 46-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Addeo (4,641,318, cited by examiner) in view of Kudo (4,606,044, cited by examiner).

As to claims 46, 57, 60, Addeo discloses a method of conducting wireless communication between first and second wireless (see node 100 in figure 2 and node 200 in figure 3). Addeo further discloses the relationship between multi-path fading and transmission data rate (see figure 1). Addeo, however, fails to disclose dynamically

adapting the transmission data rate based on quality of the communication link as claimed. Kudo discloses a method of conducting communication between first and second communication nodes (see two nodes 100 and 200 in figure 1) comprising dynamically adapting the transmission data rate based on quality of the communication link (see the title; column 1 lines 31-45; column 2 lines 6-23; column 3 lines 39-44; column 4 line 40 to column 5 line 17). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Kudo to Addeo, in order to provide an improved data transmission control system (as suggested by Kudo at column 2 lines 3-5).

As to claims 47-49, 62-64, the above combination discloses the claimed limitations (see Addeo, column 4 lines 21-44; see also Kudo, column 4 lines 40-67).

As to claims 50, 55, 65, 70, the above combination discloses the claimed limitations (see Kudo, column 1 lines 31-45; column 2 lines 6-23).

As to claims 51, 66, since the remote communication unit in Kudo is a modem, it would inherently be connected to a computer system as claimed.

As to claims 52-53, 67-68, the above combination of Addeo and Kudo fails to expressly disclose that the remote wireless communication unit comprises a mobile unit on a vehicle such as a forklift vehicle as claimed. The examiner, however, takes Official Notice that a communication system employing remote wireless communication units comprising a mobile unit on a vehicle such as a forklift vehicle is known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of the conventional communication system



employing remote wireless communication units comprising a mobile unit on a vehicle such as a forklift vehicle to the above combination, in order to employ the communication system in environments such as warehouses.

As to claims 54, 69, they are rejected for similar reasons as set forth in claims 52-53 above.

As to claims 56, 71, the above combination discloses the claimed limitations (see Kudo, column 4 line 40 to column 5 line 3).

As to claims 58-59, the above combination discloses the claimed limitations (see Kudo, column 1 lines 31-45).

As to claim 61, since the communication units in Addeo are mobile units (see column 4 lines 47-49), Addeo discloses the claimed limitations.

***Allowable Subject Matter***

13. Claims 26-33 are allowed.

As to claim 26-31, the prior art of record fail to disclose or render obvious the operations of the mobile transceiver units for which a communication link the base transceiver has not been established, as specified in independent claim 26.

As to claims 32-33, the prior art of record fail to disclose or render obvious a communication system as claimed, wherein the mobile transceiver units which predict successful communication with the base transceiver station at the increased data rate responding to signals from the base transceiver station at the increased data rate, and the mobile transceiver units which fails to predict successful communication with the

Art Unit: 2685

base transceiver station at the increased data rate responding signals from the base transceiver station at the limited data rate.

***Allowable Subject Matter***

14. Claim 34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

As to claim 34, the prior art of record fail to disclose or render obvious the evaluation operations of a mobile transceiver unit in a communication system as specified in the claim.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baran (4,438,511) discloses varying transmission data rate.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen T Vo whose telephone number is (703) 308-6728. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (703)305-4385. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2685

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen Vo

  
3-17-2005

**NGUYEN T. VO**  
**PRIMARY EXAMINER**